IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1153 OF 2004

Dr. Ishwarprasad Satyanarayan Gilada ..Petitioner

V/s.

State of Maharashtra & Ors. ..Respondents

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Mr. Ajay Panickar, Adv. for the petitioner

Mrs. A.S. Pai, A.P.P. for respondent Nos. 1 to 3.

Mr. S.L. Manshinde, Adv. for respondent No.4

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CORAM: H.L. GOKHALE AND
SMT. V.K. TAHILRAMANI, JJ.

DATE : 16TH AUGUST, 2004

P.C..

1. Heard Mr. Panickar for the petitioner. Mrs. Pai, A.P.P. appears for respondent Nos. 1 to 3. Mr. Manshinde appears for respondent No.4.

2. The petitioner and the respondent No.4 both are accused in case No. 347/P/2000 (C.R. No. 77/98) which is pending before the 46th Court. Metropolitan Magistrate, Mazgaon, Mumbai. The respondent No.4 has been shown as an absconding and wanted in that case. Mrs. Pai appears for the State states that on 6.8.2004, the learned Magistrate has recorded that the police are going to file additional charge-sheet against the

respondent No.4 shortly.

3. The grievance of the petitioner is that whereas he was arrested under this C.R. in April, 1999 he was required to remain in custody for 19 days on the ground that the respondent No.4 was not available. Since the respondent No.4 was not traced by the police, he has some grievance against the police for this inaction on their part. The present petition therefore, prays through prayer (a) that the respondent No.4 be arrested immediately and produced before the concerned Court.

4. The respondent No.4 was subsequently arrested and moved an application for bail before the Magistrate on 6.8.2004 and has been released on bail. Mr. Manshinde appears for the respondent No.4 and states that this being the position the same is satisfied with respect to the prayer clause (a).

5. The second prayer in this petition is prayer (b) which seeks investigation into the inaction on the part of the police in not arresting the respondent No.4. As far as this prayer is concerned, even if one decides to maintain this petition, the prayer will have to be decided on affidavits. Instead of that it will be better that

the petitioner lodges a complaint to the Director General of Police for whatever are his grievances against the police in not arresting the respondent No.4 because of which he suffered. On such complaint being filed, it will be expected from the D.G.P. to look into it with all seriousness and on being convinced that there is material to hold an enquiry in respect of the complaint including the departmental enquiry against the officer concerned to take necessary decision on the material to be produced by the petitioner. We make it clear that, it will be open to the D.G.P. to decide the grievance of the petitioner on merits and to hold enquiry and arrive at any logical conclusion. He may as well arrive at a decision that no case is made out as claimed. This takes the care of prayer (b).

6. We also make it clear that if the petitioner has any grievance against police independent of the action being taken by the D.G.P. it will be open to him to file Suit for compensation, if he so desires and if the Suit is permissible and maintainable within the four corners of law.

7. With the above directions, this petition is disposed of.

8. Authenticated copy of this order be made

available to the parties.